

EXHIBIT 1

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

NATIONAL COLLEGIATE STUDENT)

LOAN TRUST 2005-1, a Delaware)

Statutory Trust,)

Plaintiff,)

vs.) 13-2-36081-1 KNT

NAKIA SCOTT and TONYA SCOTT,)

Defendants.)

VERBATIM REPORT OF PROCEEDINGS

BEFORE THE HONORABLE

MARY ROBERTS

OCTOBER 24, 2014



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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR THE PLAINTIFF:</p> <p style="padding-left: 40px;">MATTHEW CHEUNG Patenaude & Felix 19401 40th Ave West, Suite 280 Lynnwood, Washington 98036 800.832.7675 matthew.cheung@pandf.us</p> <p>FOR THE DEFENDANTS:</p> <p style="padding-left: 40px;">SAMUEL R. LEONARD Robblee Detwiler & Black, PLLP 2101 4th Avenue, Suite 1000 Seattle, Washington 98121 206.467.6700 sleonard@unionattorneysnw.com</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">--oOo--</p> <p style="text-align: center;">(BEGINNING OF TRANSCRIPTION)</p> <p style="text-align: center;">(Proceedings begin at 9:01 a.m.)</p> <p>THE COURT: Please be seated. Okay.</p> <p>We are here on National Collegiate Student Loan Trust versus Scott; Cause Number 13-2-36081-1. I have read everything. Let's start with introductions. Mr. Cheung, I know you. You've been here a few times.</p> <p>MR. CHEUNG: Matt Cheung, representing the plaintiffs.</p> <p>MR. LEONARD: Sam Leonard. And this is Tonya Scott.</p> <p>THE COURT: Okay. Good. As I said, I've read everything. I'm ready to hear from you when you're ready, Mr. Cheung.</p> <p>MR. CHEUNG: Thank you, Your Honor.</p> <p>The plaintiff is asking this court to grant its motion for summary judgment and mainly due in part to the request for admissions. She has admitted to the under -- both the defendants have admitted to the underlying debt. It was an educational loan. Both admit to they have not paid, having not paid the loan in full.</p> <p>They've both admitted to an account being established for payment of the loan. They both</p>												
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">PROCEEDINGS:</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>Argument by Mr. Cheung</td> <td style="text-align: right;">4</td> </tr> <tr> <td>Argument by Mr. Leonard</td> <td style="text-align: right;">8</td> </tr> <tr> <td>Rebuttal by Mr. Cheung</td> <td style="text-align: right;">11</td> </tr> <tr> <td>Rebuttal by Mr. Leonard</td> <td style="text-align: right;">16</td> </tr> <tr> <td>Court's ruling</td> <td style="text-align: right;">17</td> </tr> </tbody> </table>	PROCEEDINGS:	PAGE	Argument by Mr. Cheung	4	Argument by Mr. Leonard	8	Rebuttal by Mr. Cheung	11	Rebuttal by Mr. Leonard	16	Court's ruling	17	<p style="text-align: right;">Page 5</p> <p>admitted to the account at issue in this complaint that was identified by the complaint and identified by the account number, that this account has not been paid in full.</p> <p>They've also admitted that they have not made payments for -- well, it was actually a partial admission -- have not made a payment since January 29th of 2010. It was admitted that there is a balance due and owing on the account, and the defendant has not provided anything to dispute the balance, has not provided any proof of payments, other than the fact that she's stated that she has made some payments.</p> <p>She has not provided proof that this account has been paid in full or that any other entity is attempting to collect this debt. She's simply speculating that our client does not have the right to collect this debt. She's already admitted that the account at issue in this complaint that was identified by the plaintiff is an account that was used to pay -- that was established for repayment of her student loan.</p> <p>THE COURT: Could you respond a little bit more specifically to the issue about whether or not your client is an appropriate party to collect on</p>
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<p style="text-align: right;">Page 6</p> <p>1 this particular loan or whether you have proved that</p> <p>2 your client is in that position.</p> <p>3 MR. CHEUNG: Yes. Your Honor, in the</p> <p>4 loan payment history it identifies the underlying</p> <p>5 loan. This was provided and supported by an affidavit</p> <p>6 of my client. The original contract, a copy of it was</p> <p>7 provided by my client and the pool supplement showing</p> <p>8 that the transfer of this loan went to my client.</p> <p>9 THE COURT: So can you point to me</p> <p>10 where in your paperwork that is clearly set forth that</p> <p>11 the loan was one that was transferred to your client?</p> <p>12 MR. CHEUNG: Yes. In the affidavit on</p> <p>13 the loan payment history report has the date, the day</p> <p>14 it was signed, it has the chargeoff, it has the</p> <p>15 disbursement date and the disbursement amount.</p> <p>16 THE COURT: I'm sorry. You have to be</p> <p>17 a little bit more specific. What am I looking at? An</p> <p>18 attachment to the exhibit, or...</p> <p>19 MR. CHEUNG: Yes. May I approach?</p> <p>20 THE COURT: Sure.</p> <p>21 MR. CHEUNG: This identifies the</p> <p>22 actual loan.</p> <p>23 THE COURT: And how do we connect that</p> <p>24 to the loans that your client is...</p> <p>25 MR. CHEUNG: It provides a social</p>	<p style="text-align: right;">Page 8</p> <p>1 though, that there's -- here's what I'm looking for.</p> <p>2 Your client or the aviant[phonetic] declares that</p> <p>3 these records are in the hands of your client. What</p> <p>4 it doesn't say is why. Am I not missing a link there?</p> <p>5 MR. CHEUNG: Well, I guess I'm not</p> <p>6 exactly sure what specifically language you would need</p> <p>7 for this.</p> <p>8 THE COURT: Something like, these are</p> <p>9 our loans. Here's why.</p> <p>10 MR. CHEUNG: I guess that's what I</p> <p>11 think they intended to convey in paragraph 6, that</p> <p>12 these were the loan records that are in their records</p> <p>13 that they...</p> <p>14 THE COURT: Okay. Mr. Leonard.</p> <p>15 MR. LEONARD: Good morning, Your</p> <p>16 Honor.</p> <p>17 THE COURT: And that's what I want you</p> <p>18 to focus on too.</p> <p>19 MR. LEONARD: Yeah, no, that's...</p> <p>20 THE COURT: And I'm asking the</p> <p>21 question in a sincere manner.</p> <p>22 MR. LEONARD: No, I think it's a good</p> <p>23 question, and what we're asking here for today is not</p> <p>24 only that their motion for summary judgment not be</p> <p>25 granted, but they be required to provide proof within</p>
<p style="text-align: right;">Page 7</p> <p>1 security number. It provides -- most of the loans are</p> <p>2 identified by the disbursement date and showed by the</p> <p>3 original principal.</p> <p>4 THE COURT: But again, where am I</p> <p>5 seeing that connection? I'm just missing where in the</p> <p>6 affidavit it says something about this telling me that</p> <p>7 this particular loan is included.</p> <p>8 MR. CHEUNG: On part number 6.</p> <p>9 THE COURT: Paragraph 6. Okay.</p> <p>10 MR. CHEUNG: Paragraph 6.</p> <p>11 THE COURT: Which I have highlighted,</p> <p>12 so... Okay. Again, I'm seeing that there's a</p> <p>13 reference to that, but, but where in the declaration</p> <p>14 does it say that National Collegiate Student Loan owns</p> <p>15 that debt or has the authority over that debt, or...</p> <p>16 MR. CHEUNG: So in paragraph 3 it</p> <p>17 states that there is loans owed originally by Nakia</p> <p>18 and Tonya.</p> <p>19 THE COURT: Uh-huh.</p> <p>20 MR. CHEUNG: Then in part paragraph 4</p> <p>21 explains that these loans are part of my, my client's</p> <p>22 business portfolio, and part 5, 6, that these loan</p> <p>23 records were with the possession of the custodian of</p> <p>24 the record are within my client's possession.</p> <p>25 THE COURT: Okay. So am I missing,</p>	<p style="text-align: right;">Page 9</p> <p>1 10 days that they actually have standing to bring the</p> <p>2 suit.</p> <p>3 Standing is not an issue that it</p> <p>4 should be taken lightly, and it's within the court's</p> <p>5 discretion to require them to prove that they are the</p> <p>6 correct party.</p> <p>7 To give you a little background,</p> <p>8 there's actually suits across the nation right now</p> <p>9 dealing with National Collegiate Student Loan Trust</p> <p>10 and this very issue. I mean, that's how it came to my</p> <p>11 attention.</p> <p>12 Typically, when a debt is assigned to</p> <p>13 a debt collector, there is a, you know, assignment</p> <p>14 document. That document is not here. There's also</p> <p>15 other issues. I mean, if you look at -- if you look</p> <p>16 at the account statement, the history of account, it</p> <p>17 says -- pull it up here real quick -- it says that</p> <p>18 this was assigned in 2013.</p> <p>19 THE COURT: Can you help me see where?</p> <p>20 MR. LEONARD: Yeah.</p> <p>21 THE COURT: Which...</p> <p>22 MR. LEONARD: The loan payment</p> <p>23 history.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. LEONARD: If you go down the</p>



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<p style="text-align: right;">Page 10</p> <p>1 left-hand side it says date of assignment.</p> <p>2 THE COURT: Uh-huh.</p> <p>3 MR. LEONARD: And that says it was in</p> <p>4 August 6, 2013, and yet we're dealing with a pool that</p> <p>5 was created in 2005. And if you look at the pooling</p> <p>6 and supplement agreement -- you'll have to excuse me.</p> <p>7 The exact area I don't know if I highlighted, which I</p> <p>8 probably should have, but...</p> <p>9 This is a 2005 pool. The loan was</p> <p>10 entered into in 2004. If you go through the pooling</p> <p>11 and supplement agreement -- unfortunately, I don't</p> <p>12 have the exact paragraph here -- it says that it was</p> <p>13 assigned in 2005.</p> <p>14 And so we have contradictory</p> <p>15 statements about assignment and then, you know, the</p> <p>16 only proof that they do provide on this assignment is</p> <p>17 the declaration. And if you look at paragraph 4 it</p> <p>18 says, and this is hearsay, education loan accounts</p> <p>19 records are compiled and recorded as part of</p> <p>20 plaintiff's regularly conducted business activity at</p> <p>21 or near the time of the event and from information</p> <p>22 transmitted from a person with knowledge of said</p> <p>23 event, by or from information transmitted by a person</p> <p>24 with knowledge of accounts or events described within</p> <p>25 the business record.</p>	<p style="text-align: right;">Page 12</p> <p>1 satisfactory to show that this account has been</p> <p>2 assigned.</p> <p>3 THE COURT: I'd like somebody to say</p> <p>4 it who has knowledge of it.</p> <p>5 MR. CHEUNG: Well, so...</p> <p>6 THE COURT: Just that clearly.</p> <p>7 MR. CHEUNG: Yes.</p> <p>8 THE COURT: It's not in here.</p> <p>9 MR. CHEUNG: And it's something I've</p> <p>10 been trying to work with my client exactly.</p> <p>11 THE COURT: Yeah.</p> <p>12 MR. CHEUNG: National Collegiate</p> <p>13 funding, they essentially take over ownership of the</p> <p>14 loan immediately after the check is disbursed. They</p> <p>15 take ownership of just about all the loans for Bank</p> <p>16 America or Capital One -- not Capital. Sorry. --</p> <p>17 Credit One or Chase. They are assigned the debt</p> <p>18 immediately. It's before the account has ever been</p> <p>19 even gone into default.</p> <p>20 THE COURT: Uh-huh.</p> <p>21 MR. CHEUNG: The date it is signed</p> <p>22 later in there is actually when it gets transferred</p> <p>23 from National Collegiate funding to the individual</p> <p>24 trust, and that's the simple thing about when</p> <p>25 (inaudible) the trust.</p>
<p style="text-align: right;">Page 11</p> <p>1 We need that person. That person</p> <p>2 needs to be before us. This person doesn't even know,</p> <p>3 they can't even give us the name of that person that</p> <p>4 transferred it, allegedly transferred it. And, you</p> <p>5 know, like I said, this came to my attention. There's</p> <p>6 a class action suit against plaintiff's counsel for</p> <p>7 this exact issue down in California, in Texas.</p> <p>8 You know, I'm a member of the national</p> <p>9 association of consumer advocates. There's a guy down</p> <p>10 there that every single one of these cases that comes</p> <p>11 before him is dismissed.</p> <p>12 Now, we haven't asked for summary</p> <p>13 judgment because I don't think we have to. I mean,</p> <p>14 this is a standing issue. They need to provide us</p> <p>15 with some proof that they have standing to bring this</p> <p>16 suit, and unless they can then we have a serious</p> <p>17 issue, I think, and that's why we're asking this court</p> <p>18 to demand proof of assignment within 10 days.</p> <p>19 You know, we're not asking for it to</p> <p>20 be dismissed immediately. We just want to see actual</p> <p>21 proof that this was assigned.</p> <p>22 Thank you, Your Honor.</p> <p>23 THE COURT: Mr. Cheung.</p> <p>24 MR. CHEUNG: I guess, you know, I'm</p> <p>25 not exactly sure what the court would feel would be</p>	<p style="text-align: right;">Page 13</p> <p>1 THE COURT: Uh-huh.</p> <p>2 MR. CHEUNG: NCO isn't the servicer.</p> <p>3 There's been other servicers. The National Collegiate</p> <p>4 Student Loan Tryst is simply just a holding place for</p> <p>5 the money until it goes into default.</p> <p>6 So that's where the NCO is. It is</p> <p>7 simply saying that these are part of our business</p> <p>8 records because it's always been a part of their</p> <p>9 records, that this loan has always been -- immediately</p> <p>10 after it was disbursed it was in my client's hands.</p> <p>11 THE COURT: And I can sort of infer</p> <p>12 that from a lot of what I'm seeing, but no one is</p> <p>13 actually stating that under penalty of perjury, as far</p> <p>14 as I can tell.</p> <p>15 MR. CHEUNG: So if they were to</p> <p>16 declare under penalty of perjury that this loan is</p> <p>17 owned by them, would that be sufficient?</p> <p>18 THE COURT: Somebody with personal</p> <p>19 knowledge, who can explain that this is what happened</p> <p>20 and this is now our loan and we're the ones who get to</p> <p>21 enforce it. That's what I'm looking for.</p> <p>22 MR. CHEUNG: We can provide that.</p> <p>23 THE COURT: And I guess, Mr. Cheung,</p> <p>24 you've heard me go on and on about these kinds of</p> <p>25 things in the past.</p>



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<p style="text-align: right;">Page 14</p> <p>1 MR. CHEUNG: Yeah.</p> <p>2 THE COURT: And I don't mean to pick</p> <p>3 just on you and it's not like all of your cases come</p> <p>4 to this, but some of them do. You know, the type of</p> <p>5 declaration where there's no -- there's very little</p> <p>6 about it that is specific to the case. It's just that</p> <p>7 the paragraph 4, the language in 4 is so -- I guess it</p> <p>8 raises red flags about what really happened, because</p> <p>9 it's such general language and it to me demonstrates a</p> <p>10 lack of personal knowledge of the person signing the</p> <p>11 declaration.</p> <p>12 You know, education loan account</p> <p>13 records are compiled and recorded as part of</p> <p>14 plaintiff's regularly conducted business activity at</p> <p>15 or near the time of the event and from information</p> <p>16 transmitted from a person with knowledge of said</p> <p>17 event, by or from information transmitted by a person</p> <p>18 with knowledge of the accounts.</p> <p>19 I would expect to say, I'm the</p> <p>20 custodian of records. I've looked through my records.</p> <p>21 We bought a loan back in 2005 that had the Scott's</p> <p>22 name on it. Here's -- and we keep records and this is</p> <p>23 what we do and I know this is what we do, not I know</p> <p>24 there's a person who might know something that</p> <p>25 happened near in time to an event that I'm not</p>	<p style="text-align: right;">Page 16</p> <p>1 summary judgements is because at the time that we were</p> <p>2 noted this motion for summary judgment she wasn't</p> <p>3 represented by counsel. She's simply admitted that</p> <p>4 she owed the debt.</p> <p>5 So we were just -- you know, I had</p> <p>6 used the basic affidavit for my client.</p> <p>7 THE COURT: Uh-huh. I understand.</p> <p>8 MR. CHEUNG: Which has been</p> <p>9 sufficient. But I can provide -- but now that she's</p> <p>10 actually raising issues of standing, this is the first</p> <p>11 time that she's raised it since we noted. We ask tht</p> <p>12 this court grant our motion for summary judgment. We</p> <p>13 certainly provide a deposit sale agreement --</p> <p>14 THE COURT: Good.</p> <p>15 MR. CHEUNG: -- with the schedule in</p> <p>16 supplementing this pool supplement that shows that the</p> <p>17 overall and their affidavit will actually identify the</p> <p>18 disbursement day in the actual language.</p> <p>19 THE COURT: Sounds good. Sounds like</p> <p>20 it'll almost certainly solve the problem. Mr.</p> <p>21 Leonard.</p> <p>22 MR. LEONARD: It will half solve the</p> <p>23 problem. If you notice in that statement, we talked</p> <p>24 about NCO Financial Services. That's not who brought</p> <p>25 this suit.</p>
<p style="text-align: right;">Page 15</p> <p>1 actually talking about.</p> <p>2 I mean, that's what's wrong with it.</p> <p>3 You know, it's the same paragraph in each and every</p> <p>4 case. It bears no relationship to the specific case.</p> <p>5 It makes someone like me look at it and think, this is</p> <p>6 not -- no one has taken a careful look to see whether</p> <p>7 this is actually the case in this case. No one who</p> <p>8 actually knows. It's just too general.</p> <p>9 Even though I'm not saying I don't</p> <p>10 think it's true. It's just not specific enough to</p> <p>11 even support a claim that it's a business record that</p> <p>12 the person can declare is true.</p> <p>13 MR. CHEUNG: If Your Honor would grant</p> <p>14 me, I can provide that information. If we could</p> <p>15 continue this hearing for --</p> <p>16 THE COURT: Yeah.</p> <p>17 MR. CHEUNG: -- six weeks, so I could</p> <p>18 have it within two weeks, but I want to give him at</p> <p>19 least 28 days to review it.</p> <p>20 THE COURT: Yeah.</p> <p>21 MR. CHEUNG: I can have the deposit</p> <p>22 sale agreement with the schedule attached to it</p> <p>23 identifying this loan. My client has -- is more than</p> <p>24 willing -- so one of the issues why this affidavit is</p> <p>25 not the standard for which I can provide for my other</p>	<p style="text-align: right;">Page 17</p> <p>1 THE COURT: Right.</p> <p>2 MR. LEONARD: Not a party to this</p> <p>3 suit. The person who brought this -- or the entity</p> <p>4 that brought this suit is National Collegiate Student</p> <p>5 Loan Trust. Typically trustees bring suits on behalf</p> <p>6 of trusts, not the trusts as themselves.</p> <p>7 THE COURT: Uh-huh.</p> <p>8 MR. LEONARD: We also need to see some</p> <p>9 sort of affidavit that it's the trust, not NCO</p> <p>10 Financial Services, not the trustee, not the</p> <p>11 beneficiary that's supposed to bring the suit.</p> <p>12 THE COURT: Uh-huh.</p> <p>13 MR. LEONARD: That has to be provided.</p> <p>14 Otherwise, you know, there's not standing. We run the</p> <p>15 risk of somebody else coming along later --</p> <p>16 THE COURT: Right.</p> <p>17 MR. LEONARD: -- and suing them again.</p> <p>18 THE COURT: Understood. Okay. So Mr.</p> <p>19 Cheung, you know what you need to do. Why don't I</p> <p>20 just -- let's see. If you will prepare an order that</p> <p>21 denies the motion without prejudice, that requires a</p> <p>22 new motion with proof of standing within, I think, six</p> <p>23 weeks, that's fine.</p> <p>24 If you want to actually pick another</p> <p>25 date, I mean, another hearing date, that's fine too.</p>



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1 I'm willing to be a little bit flexible on that.
 2 Whatever works for the parties. So why don't the two
 3 of you work out an order. If you want an actual date,
 4 talk to Mr. Walzer and then he can bring it back to me
 5 to sign.

6 MR. CHEUNG: Okay.

7 MR. LEONARD: Okay.

8 MALE VOICE: All rise.

9 (End of proceedings at 9:18 a.m.)

10 (END OF TRANSCRIPTION)

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15 2015.

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